

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS MORAN, II, Receiver of the	:	
Assets of LifeTime Capital, Inc., and	:	
Certain Affiliated Persons and Entities,	:	
 Plaintiff,	:	 Case No. 3:06cv050
 vs.	:	 JUDGE WALTER HERBERT RICE
 U.S. BANK, N.A.,	:	
 Defendant.	:	

ENTRY SUSTAINING IN PART AND OVERRULING IN PART
PLAINTIFF'S OBJECTIONS TO REPORT AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE (DOC. #23); REPORT AND
RECOMMENDATIONS (DOC. #22) ADOPTED, WITH ONE MINOR
EXCEPTION; DEFENDANT'S MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO COMPEL ARBITRATION (DOC. #12) SUSTAINED
IN PART AND OVERRULED IN PART; PARTIES ORDERED TO
ARBITRATE DISPUTE; CAPTIONED CAUSE STAYED PENDING
ARBITRATION

After having conducted a de novo review, as mandated by 28 U.S.C.
§ 636(b)(1), this Court concludes that, for the reasons set forth in the Report and
Recommendations of Magistrate Judge Sharon Ovington, the claims of the Plaintiff
must be resolved through arbitration. However, given the preference, reflected in
9 U.S.C. § 3, that a court stay, rather than dismiss a case it has ordered to be
arbitrated, the Court cannot accept Judge Ovington's recommendation that the

captioned cause be dismissed.¹ Accordingly, the Court sustains in part and overrules in part the Plaintiff's Objections to the Report and Recommendations (Doc. #23). The Objections are sustained, as they relate to the request that this litigation be stayed rather than dismissed. Otherwise, they are overruled. Judge Ovington's Report and Recommendations (Doc. #22) are adopted, with the minor exception of the recommendation that this litigation be dismissed. The Defendant's Motion to Dismiss or, in the alternative, to Compel Arbitration (Doc. #12) is sustained, as it relates to the request to compel, and overruled, as it pertains to dismissal.² The parties are ordered to proceed to arbitration, and this litigation is stayed pending the resolution of such proceedings.

The captioned cause is found suitable for administrative processing.

March 30, 2007

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.

¹Defendant has not objected to the Plaintiff's request that this Court stay this litigation, rather than dismissing it. See Doc. #24 at 8.

²The Defendant had argued that Plaintiff's Amended Complaint (Doc. #8) must be dismissed because Plaintiff was without standing to pursue claims on behalf of the investors harmed by LifeTime Capital, Inc., and under the theory of in pari delicto. Judge Ovington concluded that those issues were for the arbitrator to resolve. The Defendant has not objected to that recommendation. This Court agrees with and adopts that recommendation.